

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-993V

Filed: October 21, 2016

Unpublished

LOU ANN HARE,

v. Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

* Damages Decision Based on Proffer;
* Tetanus, Diphtheria, acellular Pertussis
* ("Tdap") Vaccine; Adhesive Capsulitis;
* Injection Pain; Shoulder Injury Related
* to Vaccine Administration ("SIRVA");
* Special Processing Unit ("SPU")

Respondent.

*

Richard H. Moeller, Moore, Heffernan, et al., Sioux City, IA, for petitioner.

Lynn E. Ricciardella, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On September 9, 2015, Lou Ann Hare ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act" or "Program"). Petitioner alleged that she suffered shoulder injuries caused by tetanus, diphtheria, acellular pertussis ("Tdap") vaccine she received on October 31, 2014. Pet. at 1. The case was assigned to the Special Processing Unit ("SPU") of the Office of Special Masters.

On December 10, 2015, the undersigned issued a ruling on entitlement finding petitioner entitled to compensation for a shoulder injury related to vaccine administration ("SIRVA"). On October 21, 2016, respondent filed an amended proffer on award of compensation ³ ("Proffer") indicating petitioner should be awarded \$530,130.83, which

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ An earlier proffer, filed on October 19, 2016, contained an error.

amount represents \$525,000.00 for all elements of compensation to which petitioner would be entitled under § 300aa-15(a), and \$5,130.83 to satisfy, in full, the State of Iowa Medicaid lien. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner the following compensation:**

- (1) A lump sum payment of \$525,000.00 in the form of a check payable to petitioner, Lou Ann Hare.** This amount accounts for all elements of compensation under § 300aa-15(a) to which petitioner would be entitled; and
- (2) A lump sum payment of \$5,130.83, representing compensation for satisfaction of the State of Iowa Medicaid lien, payable jointly to petitioner and**

Iowa Medicaid Enterprise
Revenue Collections/Lien Recovery Unit
P.O. Box 36446
Des Moines, Iowa 50315

Petitioner agrees to endorse this payment to Iowa Medicaid Enterprise.

The clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

LOU ANN HARE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 15-993V
Chief Special Master Dorsey
ECF

RESPONDENT'S AMENDED PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items:

Respondent proffers that, based on the evidence of record, petitioner, Lou Ann Hare, should be awarded **\$525,000.00**. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

Respondent further proffers that petitioner, Lou Ann Hare, should be awarded funds to satisfy, in full, the State of Iowa Medicaid lien in the amount of **\$5,130.83**, which represents satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Iowa may have against any individual as a result of any Medicaid payments the State of Iowa has made to or on behalf of Lou Ann Hare from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury, under Title XIX of the Social Security Act.

II. Form of the Award:

The parties recommend that the compensation provided to Lou Ann Hare should be made through two lump sum payments as described below, and request that the special master's decision and the Court's judgment award the following:¹

- (1) A lump sum payment of \$525,000.00 in the form of a check payable to petitioner, Lou Ann Hare. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled; and
- (2) A lump sum payment of \$5,130.83, representing compensation for satisfaction of the State of Iowa Medicaid lien, payable jointly to petitioner and to:

Iowa Medicaid Enterprise
Revenue Collections/Lien Recovery Unit
P.O. Box 36446
Des Moines, Iowa 50315

Petitioner agrees to endorse this payment to Iowa Medicaid Enterprise.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Acting Deputy Director
Torts Branch, Civil Division

ALTHEA W. DAVIS
Senior Trial Counsel
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses and future pain and suffering.

/s/ Lynn E. Ricciardella
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Dated: October 21, 2016